

1 **Rule 37. Suggestion of mootness; voluntary dismissal.**

2 (a) *Suggestion of mootness.* ~~It is the duty of each party at all times during the~~
3 ~~course of an appeal or other proceeding to inform the court of any~~ Any party
4 aware of ~~circumstances which have transpired subsequent to the filing of the~~
5 ~~appeal or other proceeding which~~ that ~~render moot one or more of the issues~~
6 ~~raised.~~ presented for review must promptly ~~If a party determines that one or~~
7 ~~more, but less than all, of the issues have been rendered moot, the party shall~~
8 ~~promptly advise the court by filing~~ file ~~a “suggestion of mootness” in the form of~~
9 ~~a motion under Rule 23. If all parties to an appeal or other proceeding agree as to~~
10 ~~the mootness of one or more, but less than all, of the issues raised, a stipulation~~
11 ~~to that effect shall be filed with the suggestion of mootness. If an appellant~~
12 ~~determines all issues raised in the appeal or other proceeding are moot, a motion~~
13 ~~for voluntary dismissal shall be filed pursuant to the provisions of paragraph (b)~~
14 ~~of this rule.~~

15 (b) *Voluntary dismissal.* ~~At any time prior to the issuance of a decision an~~
16 ~~appellant may move to voluntarily dismiss an appeal or other proceeding. If all~~
17 ~~parties to an appeal or other proceeding agree that dismissal is appropriate,~~
18 ~~stipulation to that effect shall be filed with the~~ and stipulate to a ~~motion for~~
19 ~~voluntary dismissal, the appeal will be promptly dismissed. Any such~~ The
20 ~~stipulation shall~~ must ~~specify the terms as to payment of costs and fees, if~~ any.
21 ~~applicable, and provide for payment of whatever fees are due.~~

22 (c) *Affidavits.* ~~If~~ the ~~appellant has the right to effective assistance of counsel,~~
23 ~~a motion to voluntarily dismiss~~ the appeal ~~for reasons other than mootness shall~~
24 ~~must~~ be accompanied by appellant’s personal affidavit or declaration under
25 Section 78B-5-705 ~~demonstrating that~~ the ~~appellant’s decision to dismiss the~~
26 ~~appeal is voluntary and~~ is ~~made with knowledge of the right to an appeal and an~~
27 ~~understanding of the consequences of voluntary dismissal. If counsel for the~~

28 appellant is unable to obtain the required affidavit or declaration from the
29 appellant, the motion must be accompanied by counsel's affidavit or declaration
30 stating that, after reasonable efforts, counsel is unable to obtain the required
31 affidavit and certifying that counsel has a reasonable factual basis to believe that
32 the appellant no longer wishes to pursue the appeal.

33 ~~(d) A suggestion of mootness or motion for voluntary dismissal shall be~~
34 ~~subject to the appellate court's approval.~~

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36 **Advisory Committee Note.**

37 Criminal defendants have a constitutional right to the effective assistance
38 of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Arguelles*, 921
39 P.2d 439, 441 (Utah 1996). Parties in juvenile court proceedings have a statutory
40 right to effective assistance of counsel. *State ex rel. E.H. v. A.H.*, 880 P.2d 11, 13
41 (Utah App. 1994). ~~; see Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998). To protect~~
42 ~~these rights and the right to appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id.~~
43 ~~§ 78-3a-909(1)(1996), the last sentence was added to Rule 37(b) to assure that the~~
44 ~~decision to abandon an appeal is an informed choice made by the appellant, not~~
45 ~~unilaterally by appellant's attorney.~~